IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATIONSNO. 255 AND 256 OF 2000.

Mr. Hari Nilkanth Falari,
major, businessman,
resident of Dattawadi,
Mapusa, Bardez, Goa. ... Petitioner.

VERSUS

1. Smt. Satyavati T. Naik;

2. Mr. Ashok T. Naik.

3. Mrs. Ashok T. Naik.

4. Mr. Kishore T. Naik.

5. Mrs. Kishor T. Naik.

6. Mr. Uday T. Naik;

7. Mr. Anand T. Naik.

8. Mr. Yogeshwar T. Naik.

9. Mr. Shabi T. Naik.

10. Miss Shobha T. Naik,
all of major age,
residents of Siolim,
Bardez, Goa. ... Respondents.

Mr. M. S. Sonak, Advocate for the Petitioner.

Mr. V.B. Nadkarni, Senior Advocate with Mr. Y.V. Nadkarni, Advocate for the Respondents No.1, 2, 3 and 7.

CORAM: V. C. DAGA, J.

DATE: 5TH JULY, 2002.

ORAL JUDGMENT:

The impugned Orders passed are by the Civil Judge, Senior Division, Mapusa, both dated 16th June, 2000 in R.D. Nos.47/99/Sr and 48/99/Sr; whereby the

said executing Court held that claims of the Decree Holders have been fully satisfied and in the result execution petitions were dismissed.

2. In both these revision petitions, the parties are common, issues involved are identical based on more or less similar chronology of events; as such these matters were heard together and are being disposed of by this common Judgement. Considering the consensus between the parties and grounds on which these revision petitions are being allowed, I do not think it necessary to go into the detailed facts and record detailed reasons in support of my order.

3. Having heard the parties at length and having noticed the area of dispute between the parties, it is clear that the impugned Orders have been passed by the executing Court without recording any evidence and/or without going into the details of the controversy involved. From the Orders passed it is very difficult to make out or find out as to how and for what reasons the Executing Court recorded its findings adverse to the Decree Holder and reached to the conclusion that decrees in question have been satisfied.

4. The impugned orders are most perfunctory orders without specifying detail facts and/or reasons

in support of the conclusion. Even the rival parties could not throw light as to from where the facts and figures have been borrowed by the executing Court. The executing Court is expected to know that the orders of the subordinate Courts are always open to scrutiny by the higher Courts. The orders should be such which must be capable of speaking the mind of the Judge recording order or delivering Judgement. The order must be based on facts and conclusion must be supported by reasons. In this behalf I must refer to a Division Bench Judgment of this Court in the case of **Kerba Bhiwaji Shinde v. Salubai Nagorao and others,** 1983 Mh. L.J., 1009 wherein this Court had occasion to observe as under :-

" (b) Constitution of India, Art. 227 - Perfunctory judgment given by Appellate Authority, the final Court of fact - It failing to exercise jurisdiction to decide question of fact on proper appreciation of evidence - Judgment recorded in such case not in accordance with law and deserves to be quashed. "

The said observations are fully applicable to the original authority who decides the matter for the first time.

5. In the above circumstances without going into the merits and demerits of the impugned orders, the same are quashed and set aside. The matters are remanded back to the executing Court with a direction to permit the parties to lead evidence on their rival contentions and after recording evidence only the Executing Court should proceed to decide the rival contentions. It is needless to mention that looking to the long pendency of the litigation between the parties, the Executing Court shall proceed to decide the rival contentions with expeditious despatch, at any rate within three months from the date of receipt of the writ of this Court.

6. The present petitioner before this Court undertakes to serve all the Judgment Debtors, who are absent before this Court inspite of good service, within one week from the date of receipt of the writ of this Court by the executing Court. Rest of the parties present before this Court are directed to appear before the Executing Court on 15th July, 2002. Respondents No.1, 2, 3 and 7 through heir counsel agree to appear before the Executing Court. The Respondent No.2 is present in person. He is also put on notice.

7. Both the revision petitions are disposed of in terms of this order, with no order as to costs.

(V. C. DAGA)
JUDGE.

sl.